United States Court of Appeals

for the Second Circuit

APPENDIX

75-2064

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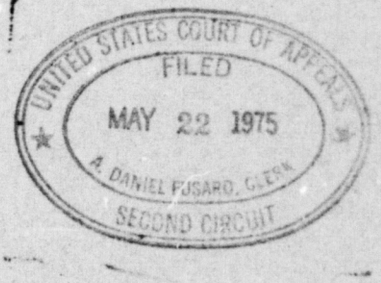
P/S

UNITED STATES ex rel.
ROBERTO S. DELGADO
v.
CARL ROBINSON, Warden

PETITIONER-APPELLANT'S
APPENDIX



LAW OFFICES
WOFSEY, ROSEN, KWESKIN & KURIANSKY
STAMFORD, CONNECTICUT

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In The
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 75-2064

UNITED STATES ex rel.
ROBERTO S. DELGADO

Petitioner-Appellant

v.

CARL ROBINSON,
Warden of Connecticut
Correctional Institution
at Somers

Respondent-Appellee

On Appeal From The
United States District Court
For The
District Of Connecticut

PETITIONER-APPELLANT'S APPENDIX

Emanuel Margolis
Attorney for
Petitioner-Appellant
777 Summer Street
Stamford, Conn. 06901

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I.

DOCKET ENTRIES

Date	
1973	
4/24	Petition for Writ of Habeas Corpus, filed.
4/24	Motion for Permission to Proceed in Forma Pauperis, filed.
4/27	Hearing on Plaintiff's Motion to Proceed in Forma Pauperis: "Granted." Zampano, J. M-4/27/73. Copy to Petitioner. Copy to Atty. Margolis.
4/27	Order to Show Cause Why a Writ of Habeas Corpus Should Not Issue, entered. Zampano, J. M-4/27/73. Ordered that respondent show cause on or before 5/14/73; that petitioner be retained in custody within this district until further order of this Court; that service by Marshal be made on or before 5/1/73; that filing be made without payment of filing fee.
5/14	Return of Respondent, filed.
8/1	Per Miscellaneous Calendar of RCZ: Evidentiary Hearing - over to 9/10/73.
9/5	Writ of Habeas Corpus Ad Testificandum, filed and entered. Zampano, J. Commanded that Roberto S. Delgado be brought to New Haven Courthouse on 9/10/73 at 10:00 a.m. to testify and then be returned to Conn. Correctional Institution, Somers, Ct., M-9/5/73.
9/10	Per Motion Calendar of RCZ: Evidentiary Hearing: Over to Sept. 11th.
9/11	Court Reporter's Notes of proceedings held 9/11/73 at New Haven before Zampano, J., filed at Bpt. (Russell, R.)
9/11	Court Hearing held on Defendant's motion to Dismiss for Lack of Jurisdiction - Decision Reserved. Petitioner's Exhibits #1 and #2, filed. Evidentiary Hearing. Petitioner's opening statement 11:32-11:44. Respondent's opening statement 11:44-11:46. Petitioner's Offer of proof re Testimony to Come In 11:48-11:56. Petitioner's Exhibits #3 and

Date	
	#4, filed. Petitioner Roberto S. Delgado sworn and testified on his own behalf. Decision Reserved. Petitioner's Brief to be filed on or before October 15th. Respondent's Brief to be filed on or before November 16th. Rebuttal Briefs to be filed on or before Nov. 26, 1973. 12:32 Court adjourned in this case. (Russell, R. - Thorner, D.C.) M-9/11/73. Zampano, J.
11/9	Transcript of Court Reporter's notes of proceedings held before Zampano, J., on 9/11/73, filed at Bpt. (Russell,R.)
1975	
2/18	Memorandum of Decision, filed and entered. Petitioner who is in state prison alleges violation of his Constitutional rights under 28 USC 2241 and 2254. All his claims are without merit. (See memo for details.) The Application For A Writ of Habeas Corpus is denied. Zampano, J. M-2/19/75.
2/20	Judgment, filed and entered. Application for Writ of Habeas Corpus denied. Markowski, C. M-2/21/75. Copies to Attys. Margolis and LaBelle.
3/12	Notice of Appeal from Judgment, filed by petitioner.
3/12	Certified copies of Docket Entries, Notice of Appeal and Bond for Costs on Appeal mailed Clerk, U.S. Court of Appeals.
4/15	Certificate of Probable Cause, filed and entered. (Zampano, J.) M-4/16/75.

II.
COMPLAINT

UNITED STATES DISTRICT COURT
District of Connecticut

Civil No. B-754

UNITED STATES ex rel.
ROBERTO S. DELGADO

Relator

v.

CARL ROBINSON,
Warden of Connecticut
Correctional Institution
at Somers

Respondent

PETITION FOR WRIT
OF HABEAS CORPUS

To The Honorable United States District Court For The District of Connecticut:

The petition of Roberto S. Delgado respectfully shows:

1. That he is a citizen of the State of Connecticut.

2. That he is at present unconstitutionally detained and imprisoned at the Connecticut Correctional Institution at Somers, Connecticut, within the District for which this Court sits, by the Respondent, Carl Robinson, by virtue of a judgment and sentence pronounced upon him by the Superior Court for the County of Hartford on the 23rd day of January, 1973, upon conviction of the crime of murder in the first degree.

3. That pursuant to the aforesaid judgment, he is detained by the Respondent at the aforesaid Institution serving a life sentence by reason of his conviction and sentence above described.

4. That petitioner has exhausted all state remedies including a petition for certiorari to the United States Supreme Court as required by 28 U.S.C. §2254. The steps taken by petitioner to exhaust his state remedies were as follows:

(a) He appealed from his conviction and judgment originally rendered by the Connecticut Superior Court on December 7, 1967, by lodging an appeal to the Connecticut Supreme Court on December 20, 1967.

(b) The petitioner's conviction and sentence to death in the electric chair were affirmed by the Supreme Court on December 7, 1971, reported at 161 Conn. 536.

(c) Petition for Writ of Certiorari to the Supreme Court of the State of Connecticut was granted by the United States Supreme Court on June 29, 1972, and the judgment was vacated insofar as it left undisturbed the death penalty imposed, and the case was remanded for further proceedings, as reported at 408 U.S. 940, 92 S.Ct. 2845, 33 L.Ed. 2d 764 (1972).

(d) Upon remand to the Connecticut Supreme Court, that Court in turn remanded to the Superior Court with instructions

from the Chief Justice (Hon. Charles S. House) that a statutory three-judge bench named by him should proceed with the imposition of penalty in accordance with the judgment of the United States Supreme Court.

(e) Petitioner filed a Motion to Dismiss for Lack of Jurisdiction on or about October 25, 1972, and a Plea in Abatement and/or Motion to Dismiss on or about October 31, 1972, on the grounds, inter alia, that the statutory court appointed by Chief Justice House was illegally constituted in violation of the pertinent Connecticut General Statutes and, the prior murder statute having been repealed without benefit of a specific savings clause, the doctrine of abatement was applicable.

(f) Petitioner's motions to dismiss and plea in abatement were peremptorily denied without hearing by the Connecticut Supreme Court on November 29, 1972.

(g) At the time of resentencing on January 23, 1973, counsel raised the jurisdictional issue as well as the abatement doctrine before the resentencing court, which nevertheless proceeded to resentence the petitioner to life imprisonment, denying his motions to dismiss and/or abate the proceedings.

5. That petitioner is restrained and imprisoned pursuant to a sentence that is illegal and void in that petitioner has been denied due process of law, equal protection of the law and effective representation of counsel, as guaranteed by the Fourteenth

Amendment to the Constitution of the United States. The facts and circumstances under which the denial of petitioner's constitutional rights have taken place are, inter alia, as follows:

(a) That, in keeping with well-established Connecticut practice, he was permitted to be and was present during the Grand Jury hearing, but he was denied the presence of counsel in his behalf, thus depriving him of the opportunity for effective examination and cross-examination of witnesses, impeachment and other evidentiary tools, and the opportunity to offer exculpatory and/or mitigating evidence which could readily have affected the nature of the indictment.

(b) That the denial of counsel and effective representation described in the preceding paragraph was particularly and critically prejudicial to petitioner in light of (1) a severe language barrier caused by his very limited knowledge of the English language; (2) the fact that he suffered from a brain abnormality associated with seizures, with a hospital diagnosis of acute brain syndrome; and (3) the court's denial of his timely request that a court stenographer be present to record the Grand Jury proceedings.

(c) That the entire process of his apprehension by the decedent police officer on the basis of a warrantless arrest for a misdemeanor (breach of the peace) which, if indeed committed by

petitioner at all, took place a considerable period of time prior to this apprehension, was unlawful, giving rise to a right to resist under both Fourth Amendment and common law principles as well as barring a subsequent conviction for murder in the first degree. (It should be noted in this regard that the warrant for breach of peace was not served on petitioner until September 8, 1967, some two weeks after the officer was killed.)

(d) That he was convicted by a statutory three-judge panel under a statute (§54-82, Conn. Gen. Stat.) unconstitutionally void on its face and/or as applied to petitioner, in that it permits conviction and sentencing by a simple majority of the court, and was unconstitutionally applied to him upon remand for resentencing, in that the original statutory court which had tried and convicted him was not reappointed and two out of the three judges were total strangers to the case.

(e) That the doctrine of abatement and pardon, although clearly applicable, was denied by the Connecticut Supreme Court and by the resentencing court as well, without benefit of a hearing.

(f) That the trial court abused its discretion, seriously prejudicing petitioner's defense, by allowing evidence of prior convictions, all of them remote in time and three of them allegedly occurring in Puerto Rico (involving aggravated assault and, in

one instance, attempt to kill), none of which had any probative relevance on the question of his credibility and serving only to inflame and prejudice the court, both on the issue of guilt as well as whether or not to convict on a lesser included offense.

6. All of the legal issues set forth in the preceding Paragraph 5 were raised before the Connecticut Supreme Court and either decided on their merits adversely to petitioner or denied.

7. By reason of the facts and circumstances heretofore recited, petitioner contends that he is deprived of his liberty without due process of law because of the reasons set forth in the foregoing paragraphs, in particular the allegations of Paragraph 5 above.

8. In order that further facts in behalf of petitioner may be presented to the Court, it is respectfully urged that the Court set a date for a hearing.

9. No other application for this relief has heretofore been made to any federal court or judge by petitioner or anyone in his behalf.

WHEREFORE, petitioner prays that a writ of habeas corpus issue herein directed to the said Carl Robinson, as Warden of the Connecticut Correctional Institution at Somers, Connecticut, commanding him to produce the body of petitioner before this Court

at a time and place to be specified in said writ, to the end that this Court may inquire into the cause of petitioner's detention, and that he be ordered discharged from detention and restraint accordingly, and that the Court grant such other and further relief as to the Court may seem just and proper under the circumstances.

/s/ Emanuel Margolis
Attorney for Petitioner

III.
RETURN OF RESPONDENT

UNITED STATES DISTRICT COURT
District of Connecticut

(Caption Omitted)

1. The respondent is the Warden of the Connecticut Correctional Institution, Somers.

2. The petitioner was found guilty by a statutory three-judge court of murder in the first degree in the killing of a Hartford policeman and judgment was rendered by the Superior Court for Hartford County on December 7, 1967, imposing the death penalty.

3. On appeal to the Supreme Court of Connecticut, the judgment dated November 23, 1971, found no error in the judgment rendered by the Superior Court (State v. Delgado, 161 Conn. 536, 290 A.2d 338).

4. On petition for certiorari, the Supreme Court of the United States issued an order dated June 29, 1972, vacating the judgment insofar as it left undisturbed the death penalty and remanding the case for further proceedings (Delgado v. Connecticut, 92 S.Ct. 2879).

5. Pursuant to the order of the Supreme Court of the United States, the Supreme Court of Connecticut on September 20, 1972, set aside the judgment of the Superior Court dated December 7,

1967, insofar as it imposed the death penalty, and remanded the cause to the Superior Court for Hartford County for further proceedings and the imposition of penalty, all not inconsistent with the order of the Supreme Court of the United States.

6. On September 20, 1972, the Chief Justice of the Supreme Court of Connecticut appointed the Honorable William P. Barber and the Honorable Paul J. Driscoll to serve with the Honorable Harold M. Mulvey, presiding on the Criminal Sessions for Hartford County, as members of the court to act in the further proceedings in this matter.

7. On January 23, 1973, the petitioner was sentenced to be confined in the Connecticut Correctional Institution, Somers, for life.

8. On January 23, 1973, the petitioner was duly delivered to said Connecticut Correctional Institution, Somers, under a mittimus issued by the Clerk of the Superior Court for Hartford County pursuant to said sentence.

9. The respondent has held, and now holds, the petitioner by virtue of the foregoing legal proceedings.

10. Attached hereto and made a part of this Return are the following:

a) Copy of Indictment

b) Copy of order of remand of Supreme Court of Connecticut

c) Copy of letter of Chief Justice dated September 20, 1972

ANSWER TO PETITION

1. Paragraphs 1, 3, 7, 8 and 9 of the petition are admitted.

2. Paragraphs 2, 4 and 5 of the petition are denied.

3. Paragraph 6 of the petition is admitted except that the issues sought to be raised before the Supreme Court of Connecticut after its remand by way of "Plea In Abatement and/or Motion to Dismiss and/or Quash Indictment" and "Motion to Dismiss For Lack of Jurisdiction" were not properly raised therein.

BY WAY OF AFFIRMATIVE DEFENSE

1. Petitioner has not sought to raise the issues complained of in the courts of the State of Connecticut by Writ of Habeas Corpus.

2. The petitioner has failed to exhaust state remedies as the doctrine of comity requires.

Carl Robinson, Warden, Connecticut Correctional Institution, Somers, Connecticut

By /s/ John D. LaBelle
John D. LaBelle
State's Attorney for
Hartford County

TO THE HONORABLE SUPERIOR COURT, HOLDEN AT HARTFORD, WITHIN AND FOR THE COUNTY OF HARTFORD, STATE OF CONNECTICUT, ON THE FIRST TUESDAY OF OCTOBER, A.D. 1967, AND NOW IN SESSION:

The Grand Jurors within and for said County accuse Roberto Delgado of Hartford, Connecticut, of the crime of MURDER IN THE FIRST DEGREE, and charge that at the City of Hartford in said County, on the twenty-fifth day of August, 1967, the said Roberto Delgado murdered one Harvey R. Young and that said murder was committed wilfully, deliberately, and premeditatedly, and with malice aforethought.

IV.

PETITIONER'S EXHIBIT 4

(CONNECTICUT SUPREME COURT RECORD)

Motion To Quash Or Dismiss Indictment

The defendant respectfully moves the Court to quash or dismiss the indictment for the following reasons:

(1) He was not permitted to have counsel present with him to protect his rights at a hearing before a Grand Jury empaneled by Superior Court order at the request of the State's Attorney to secure a true bill of indictment charging the defendant with the crime of murder in the first degree.

(2) He was not permitted to have a stenographer present at the hearing before the Grand Jury so that there would be a permanent record of the testimony of the witnesses.

Defendant,
By James D. Cosgrove,
Public Defender.

Order

The above motion having been presented to the Court, it is hereby ordered denied.

By the Court,
Paul Levine,
Assistant Clerk.

Filed November 1, 1967.

STATE OF CONNECTICUT

No. 28666
State,) Superior Court,
vs.) Hartford County,
Roberto Delgado.) December 7, 1967.

HON. ALVA P. LOISELLE, Judge
HON. LOUIS SHAPIRO, Judge
HON. WILLIAM P. BARBER, Judge

The Grand Jurors within and for said County accuse Roberto Delgado of Hartford, Connecticut, of the crime of Murder In The First Degree, and charge that at the City of Hartford in said County, on the twenty-fifth day of August, 1967, the said Roberto Delgado murdered one Harvey R. Young and that said murder was committed wilfully, deliberately, and premeditatedly, and with malice aforethought as by indictment on file will appear.

On November 1, 1967 the court denied the defendant's motion to quash or dismiss the indictment.

To said indictment on November 1, 1967, the said Roberto Delgado pleaded and said that he was not guilty and elected to be tried by the Court.

On November 6, 1967 Hon. John P. Cotter, Chief Court Administrator, designated the three judges hereinbefore set forth as the court for this trial.

On December 6, 1967, the court, having heard the case on the issue of guilt or innocence, found said Roberto Delgado guilty of Murder in the first degree.

On December 7, 1967 the court, having heard the case on the question of penalty, finds that said Roberto Delgado shall suffer death.

Whereupon this court doth accordingly adjudge the said Roberto Delgado guilty of murder in the first degree and that the death penalty shall be inflicted on said Roberto Delgado on March 4, 1968.

By the Court,
Dominic A. DiCorleto,
Clerk.

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* * *

Finding

II.

Prior to charging the Grand Jury, counsel for the accused made motion to be present with his client during the questioning of witnesses and also that a court stenographer be present during the Jury hearing. Both of these motions were denied.

In the charge to the Grand Jury, it was told that the accused may be present during their questioning of witnesses and that his counsel would not be.

Subsequent to the time a true bill was returned by the Grand Jury and prior to plea, the accused moved that the indictment be quashed because:

(1) The defendant was not permitted to have counsel present with him in the Grand Jury hearing; (2) the Court had denied his request to have a court stenographer present at the hearing before the Grand Jury to take down the testimony.

The Court denied the motion to quash.

iII

The following facts are found:

1. On August 25, 1967, Roberto Delgado went to work at seven o'clock in the morning, at Gardner Nursery, Rocky Hill, Connecticut.

2. Because it was raining, he and the other workers were sent home at 12:00 noon in the company bus.

3. He went to 541 Hudson Street where he was living, in Hartford.

4. He bought a bottle of Seagram Seven whiskey and had a few drinks.

5. He also drank a bottle of beer.

6. He took a shower, changed his clothes and was driven to Charter Oak Terrace by a friend, Jesus Colon.

7. He went to 184 Newfield Avenue to the home of Elena Dieppa.

8. Delgado was a friend of Mrs. Dieppa.

9. Mrs. Dieppa asked one of her sons to call for the police when Delgado came to her home.

10. Mrs. Dieppa left the house when Delgado came there.

11. A police cruiser was dispatched by radio at 4:52 P.M. to Newfield Avenue as a result of the call.

12. The officer in the police cruiser dispatched to 184 Newfield Avenue was Officer Harvey Young.

13. Officer Young went to the front door of 184 Newfield Avenue.

14. When the officer came to the front door Delgado ran out the back door.

15. The officer went to the rear of the house and called to Delgado.

16. Delgado came back and the officer and Delgado sat in the cruiser parked on Newfield Avenue.

17. The cruiser was parked facing towards Overlook Terrace.

18. The officer asked Delgado his name, and Delgado said his name was Johnny.

19. A young son of Mrs. Dieppa was standing near the cruiser and told the officer that his name was Roberto Delgado.

20. The boy also told Officer Young that there was a warrant out for Delgado.

21. Officer Young then called the Hartford Police Department dispatcher on the radio to inquire whether there was a warrant outstanding for Delgado.

22. The dispatcher notified Officer Young by radio that there was a warrant outstanding for Roberto Delgado for breach of peace.

23. When Officer Young learned of the outstanding warrant he placed Delgado under arrest.

24. The young boy told Delgado, in Spanish, that the policeman said Delgado was under arrest.

25. Officer Young then drove away from Newfield Avenue with Delgado in the cruiser.

26. He was headed for police headquarters with Delgado, and so notified the dispatcher.

27. Officer Young drove with Delgado towards Overlook Terrace.

28. Delgado grabbed the steering wheel while they were driving.

29. The cruiser turned off Newfield Avenue into Overlook Terrace.

30. Officer Young drove about 5/10 of a mile onto Charter Oak Terrace from Newfield Avenue with Robert Delgado in the police cruiser with him.

31. He stopped the car across the street from the Charter Oak Terrace Community Center Building.

32 The traveled portion of Overlook Terrace is about 36 feet 3 inches wide just southerly of the Charter Oak Terrace Community Center Building.

33. Directly in front of the Charter Oak Terrace Community Center Building the traveled portion of Overlook Terrace is about 47 feet 6 inches wide as the curb line curves to the street line in order to make available a parking area adjacent to the easterly side of Overlook Terrace.

34. The police cruiser's lights were flashing after it stopped.

35. A Connecticut Company bus drove past the police cruiser just after it was stopped.

36. Officer Young and Delgado were struggling in the cruiser.

37. The struggling continued outside the police cruiser and into the street.

38. As the struggle continued, the officer then used his blackjack on Delgado, and Delgado had the nightstick and was swinging it at the officer and hitting him.

39. The officer was trying to get Delgado back into the cruiser.

40. The struggle continued into the street with both of them wrestling each other on the ground.

41. The officer fell on his back with Delgado on top of him, in the middle of the street.

42. The officer seemed to be in a hopeless position and called for help.

43. The officer tried to draw his gun, both men were struggling for the gun, and one shot was fired, the bullet hitting Delgado in the chest.

44. Delgado then struck the officer several times on the head with the night stick.

45. Delgado took the gun from the officer.

46. The officer rolled over onto his stomach, crawled from the position where he had been on his back in the middle of the street, to the curb, and collapsed.

47. The officer was lying still, face down with his head on the grass plot near a mailbox, and his feet over the curb out into the street.

48. Delgado stood at the officer's feet, bent forward, and fired at the officer's head with the revolver being no more than one foot from the officer's body.

49. Delgado shot the officer in the back and head four times.

50. He continued to fire the gun until it clicked but did not fire.

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* * *

72. Delgado was taken to Hartford Hospital where he was examined by various doctors and treated for his wounds.

73. It was found that there was a bullet hole of entry in the lower part of his chest and it appeared to be in a very dangerous position.

74. Delgado was turned over and there was found a bullet hole of exit in his right flank.

75. There was some injury, within the abdominal cavity.

76. Delgado was under police guard from the time that he left 51 Sunshine Drive until he was taken to Hartford Hospital and thereafter until he was presented in the 14th Circuit Court.

77. There was a fractured rib and a laceration on his head.

78. Delgado was conscious at the hospital, was able to talk and converse with the doctors in English, but because of a language barrier it was difficult to talk with him.

79. His pulse was of good quality but he was found to be in serious condition.

80. An operation was ordered performed on Delgado.

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* * *

132. The warrant for Delgado's arrest remained in the file until it was served and executed.

133. The warrant was served and executed on September 8, 1967 by Hartford Police Department Officer Herbert W. Swan when Delgado was taken from the Hartford Hospital.

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* * *

134. Roberto Delgado was born April 18, 1932, in Juncas, Puerto Rico.

135. He has four sisters, one brother and a father.

136. His mother died in 1958.

137. He went as far as the first year of high school and then worked cutting sugar cane.

138. He served in the U. S. Army and went to Japan and Korea.

139. He was in actual combat while in Korea.

140. He won the bronze star medal, combat infantry badge and the National Defense Service Medal.

141. He received an honorable discharge from the service and received a certificate of service.

142. When he left the Army, his nerves weren't feeling well and he went to a clinic in Puerto Rico.

143. He was ordered to take medication in the form of pills.

144. He came to Connecticut in 1960 or 1961.

145. He was committed to Norwich State Hospital on September 2, 1964 on a Circuit Court commitment.

146. The doctors prescribed the same kind of pills which Delgado thought had been prescribed for him in the past in Puerto Rico.

147. The pills given to him at Norwich State Hospital had the trade name of Dilantin.

148. Dilantin is used to help minimize or stop seizures.

149. Dilantin is used to try to control the likely irritable individual with a perhaps impulsive type of behavior that is seen in some people who have an abnormality in their brain.

150. Dilantin has proved a great help in keeping certain people on an even keel emotionally.

151. Without therapeutic aid of Dilantin the behavior of the individual who has a brain abnormality is more erratic.

152. Delgado was discharged from Norwich Hospital on December 2, 1964 but he was told to continue to get out-patient treatment (including Dilantin) at Hartford Hospital.

153. Delgado did not receive out-patient treatment at Hartford Hospital.

154. When Delgado was discharged from Norwich Hospital he was told to fill out a prescription they gave him at the Hartford Hospital.

155. He went to the hospital a few times but thereafter he was told by the doctor at the Hartford Hospital that he had no further need for the pills and the hospital no longer gave them to him.

156. He went back twice to the Hartford Hospital and he couldn't get the pills.

157. Delgado had not taken Dilantin for more than a year before August 25, 1967.

158. The Norwich State Hospital records indicate that on September 2, 1964, Delgado suffered a chronic brain syndrome associated with epileptic deterioration with psychosis.

159. Delgado had had a history of epileptic seizures and convulsions and a disturbance of his mental state due to having heard voices.

160. A brain syndrome means some defect in the general functioning of the brain of the individual.

161. It also means some disturbance of logical thinking, judgment and control of behavior.

162. An electroencephalogram was performed on Delgado on November 17, 1964.

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* * *

165. The results of the electroencephalogram test performed on Delgado established that there was an abnormality of the brain.

166. The abnormality of Delgado's brain is of a type associated with seizures.

167. That abnormality was a permanent condition affecting Delgado.

168. On Delgado's discharge, the hospital record diagnosis was acute brain syndrome associated with convulsive disorder and that his condition was recovered from psychotic reaction.

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* * *

V.

TRANSCRIPT OF EVIDENTIARY HEARING

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

- -x

UNITED STATES OF AMERICA, ex rel :
ROBERTO S. DelGADO,
:
Plaintiffs,
:
- versus - : Civil Action
:
ROBINSON, WARDEN, : B-754
:
Defendant.
:

- -x

United States Court House
New Haven, Connecticut
September 11, 1973

B e f o r e:

Hon. ROBERT C. ZAMPANO, U. S. D. J.

A p p e a r a n c e s:

EMANUEL MARGOLIS, Esq.
Attorney for the Plaintiff
25 Bank Street
Stamford, Connecticut

JOHN D. LaBELLE, State's Attorney
County Court House
95 Washington Street
Hartford, Connecticut

in the case of Mr. DelGado.

In the case of Mr. DelGado we have a situation involving an accused who was born in Puerto Rico, lived in Puerto Rico for most of his life. Indeed, for a period of -- for approximately 28 or 29 years. Was born in 1932 and came to this country in 1961. A man of extremely limited educational background. Seventh grade was as far as he got. A man who at the time of the events in question, particularly the events taking place in the grand jury room, had a very, very limited knowledge of the English language. Sufficiently limited indeed so that he was provided with an interpreter. And I am going to present evidence with respect to that. And at the time of trial he was also given the benefit of an interpreter.

I point out to your Honor that his English is -- his understanding of English and his ability to speak the language are much improved now, six years later, as a result of the fact that for the past two years, as I understand it, he has been studying English at the State's Prison.

But the main thrust of our argument, your Honor please, with respect to the grand jury proceedings -- and it's on this that we wish to present evidence -- is that we had an accused in the grand jury who makes timely request to see his attorney. His attorney also sought the opportunity

to be present with him and represent him in the grand jury proceedings. Proceedings in which, as are pointed out under Connecticut practice, the accused has the right to interrogate witnesses and to really participate very directly in the proceedings there. But all with the -- without the benefit of counsel to represent him.

I point out further that with the timely request for counsel having been denied, it was reiterated on more than one occasion by Mr. DelGado, and it was still denied, his knowledge of what took place in the grand jury room and as a consequence and because of his limited knowledge, also because of certain physical ailments from which he was then suffering, some of which he still suffers from, was on a very, very limited scale, and on top of that a timely request for a reporter was also denied so that there was no, and is not to this day, a transcript of the proceedings taking place there. So that even post hoc his lawyer never had the opportunity to see what was said in the grand jury room. The only thing that his lawyer could rely upon was his client's very limited ability with his very limited understanding of English to translate back to him what happened in the grand jury room.

THE COURT: Did you say there was or was not an interpreter?

MR. MARGOLIS: There was. There was. And I want to introduce evidence as to how that actually worked and what the mechanics of that were.

The proceedings in question, I think, cannot be characterized as being anything other than not only critical but highly critical. Highly critical in this sense, so far as the grand jury is concerned. Mr. DelGado was charged with having shot a police officer and killing him. The evidence at the trial, such defenses as he put on -- and he tried to make these defenses stick and to persuade the panel of judges that this was in fact the case -- had largely to do with the fact that he was engaging in self-defense.

Very briefly, what took place was an arrest on the street without a warrant based on an alleged warrant that existed in the police department. I shouldn't say an alleged warrant. I think the evidence is pretty clear that there was a warrant outstanding in the police department. And on the basis of having heard that there was such a warrant a police officer arrested Mr. DelGado on the street and proceeded to drive him in some direction, presumably toward the police station, and an altercation of some kind took place in the course of which Mr. DelGado was shot and a bullet entered his chest and went out his back and a wrestling occurred for the weapon and the weapon apparently was gotten

by Mr. DelGado after the first shot took place and he then proceeded to shoot the police officer.

Now with that set of circumstances, your Honor, the proceedings before the grand jury, the nature of the indictment that they would be likely to return in my judgement, without any question was of the most critical importance.

Now it seems to me that under that set of circumstances -- and I am only describing it very briefly, I don't think those are the issues at this time, but only to give the Court a flavor of what was at stake -- that grand jury could have returned an indictment of murder one, it could have returned an indictment of murder two, it could even have returned an indictment of manslaughter.

Now in all of this we have an uneducated man, very limited ability in English, suffering from various ailments, which I will present to the Court, having just been released from the hospital a week or two prior, plus he was hospitalized with that bullett wound for about eleven days, and trying to understand what's going on in that grand jury room and consistently being denied the right to counsel and not even being able to talk to his counsel during the course of those proceedings.

So this is the area on which we seek this evidentiary hearing and I would like to put Mr. DelGado on

to testify in these areas so that the record will be complete.

THE COURT: Very well. I think we are proceeding --

MR. LABELLE: May I just make an observation, if the Court please?

THE COURT: Yes.

MR. LABELLE: With respect to this grand jury proceedings, they're secret. I don't have any way of rebutting anything that Mr. DelGado might say. What went on in the grand jury is secret. There's no counsel present, the State's Attorney isn't present, I can't call anybody, they are all sworn to secrecy. Where does he get off putting Mr. DelGado on the stand to saw what took place in the grand jury room? I don't think that's appropriate, your Honor.

I concede the fact that he was permitted to go in the grand jury if he wanted to. The issue as to whether or not counsel could go with him was raised prior to the grand jury, that he elected after to exercise his privilege of being present. He had an interpreter present. He has a right to question witnesses against him but not offer any evidence in his own behalf. It's only a probable cause hearing, it has nothing to do with guilt or innocence.

testify, but if you would like to make an offer of proof, Mr. LaBelle has practically conceded everything you are claiming.

MR. MARGOLIS: I think that he has, your Honor.

I would intend to offer direct evidence to show that Mr. DelGado at the time of the grand jury proceedings had an extremely limited knowledge of the English language -- almost none. That he -- his entire period of time between 1961 when he arrived in this country and 1967 was spent essentially with other Spanish speaking people That he studied English in Puerto Rico -- I think it's a standard course that's offered -- but he didn't like it and I think he told me he flunked it. He did very badly in it, he didn't take to it at all.

In any event, what I'm -- what I would try to establish is a very, very limited knowledge of English language, and quite correctly an interpreter was provided for him. Mr. DelGado advises me -- and he would be prepared to testify under oath this morning -- that the interpreter that he had in the grand jury found it very difficult to keep up with what was being said. A witness would testify at some length and almost in the style that one sees and which is so frustrating in foreign language films where

there are sub-titles and someone is going on at great length for perhaps a minute or so and has a sub-title of one line indicating what he's supposed to have said. That kind of situation here where the interpreter was in effect capsulating necessarily in this very small number of words what a witness supposedly said. And unfortunately again according to Mr. DelGado -- and he is prepared to testify to this under oath -- the interpreter would mix in a lot of English words with the Spanish, English words that he di not understand. So that complicated matters all the further.

And in effect he tells me that insofar as what was going on in that grand jury room is concerned, that he almost -- that he understood very, very little and next to nothing, just picking up words here and there. That he felt physically ill. He was on -- was supposed to have had some medication that he didn't have. He suffers from epileptic seizures and requires a drug called dilantin which he had not had since about 1964, and I notice that Mr. --

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* * *

MR. LABELLE: This is the Supreme Court record in Case No. 6566, State versus Roberto Delgado, the defendant's appeal from the Superior Court.

THE COURT: We will mark that Plaintiff's Exhibit 4. Do you wish to call certain paragraphs to my attention?

MR. MARGOLIS: Yes, your Honor. And I would like to ask Mr. LaBelle if he wishes to contest the truth of the paragraphs with -- I'm calling attention particularly to Paragraphs 148 and following.

THE COURT: To what?

MR. MARGOLIS: To 168, for the convenience of the court, all of which deal with the background of the use of certain drugs by this petitioner and his history of hospitalization for various physical conditions and in particular the epileptic deterioration problem, and epileptic seizures and convulsions and the fact that he was without the benefit of this medication for some period of time prior to the events in question and specifically at the time of the grand jury hearing.

MR. LABELLE: I am willing to stand on the record, your Honor. I accept the findings.

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* * *

A Him talk to my lawyer then he tell me. He said he cannot go in the grand jury. Go ahead.

THE COURT: Maybe you can use some leading questions.

MR. MARGOLIS: Yes, I am going to, if your Honor pleases.

Q Your interpreter at that time was a Mr. Santulla?

A Yes, sir.

Q Is that right?

A Yes, sir.

Q And Mr. Santulla, is he alive or dead right now, do you know?

A No. Him dead.

Q He died?

A Yes, sir.

Q Was he the interpreter that was with you in the grand jury?

A Yes, sir.

Q And when you were in the grand jury he translated for you what the people were saying, is that right?

A Yes, sir -- no. He talk to me just a little Spanish and English. You know, all mixed up together.

Q He talked to you Spanish and English together?

A Yes, sir.

Q And when he talked to you in English did you understand what he was saying?

A No, sir.

Q When he talked to you in Spanish did you understand what he was saying?

A Yeah. Yes, sir.

Q Was he telling you every word that everybody was saying in that grand jury or only a part of it?

A I think that's a part of it, because I see the person, you know, talk plenty, you know, and he tell me just a little bit, you know, and when he tell me, he mix talk, you know.

Q Let me understand you. The person who would be talking before the grand jury, you say would talk plenty?

A Right.

Q But the interpreter, when he would translate for you would only give you a little bit?

A Just a little bit, right.

Q And when he would give you English translation or words in English, you say you didn't understand it?

A Right.

Q Now, this procedure, did this interpreter interpret for you that way all day long while you were in the grand jury? Do you understand my --

A Yes. (Indicated)

Q Is that the way it went all day?

A Yeah. All day.

Q And how much did you understand about what was going on in that grand jury room?

A Just little bit. You know, a little bit.

Q A little bit.

A Yeah.

Q Did you understand that you could ask questions while you were sitting there? Did anybody tell you that, that you could ask questions?

A Yeah. The interpreter tell me that. But, you know, I -- I need a lawyer for ask questions, you know, because I don't know what go -- go ask the people, you know.

Q When you were sitting in the grand jury room did you want to ask some questions?

A I like to ask some questions, but, you know, I no have no lawyer with me.

Q And you didn't know how to ask the questions?

A Right. Yes.

Q When the people were in the grand jury room testifying as witnesses did you know some of them? Who they were?

A Yeah, I know some of them.

Q You did?

A Yes, sir.

Q They were people that you had met before?

A Yes, sir.

Q People from the neighborhood?

A Right.

Q And you wanted to ask some questions of these people?

A Right.

Q Is that right?

A Yes.

Q But you didn't know how to do it?

A Right.

Q When you were in the grand jury room you had just got out of the hospital, how long had you been in the hospital? If you remember.

A I been in the hospital eleven day. Seem about two or three week.

Q It was about two or three weeks?

A After I got out the hospital. Maybe four week.

Q And did you hurt from the bullet wound that you had?

A Yeah. I hurt down there. It was pain me, my back and in my chest.

Q The bullet wound was in your chest?

A Yes, sir.

Q And did you have any of the drugs or the medication

that you needed for your epilepsy? Did you have any of that?

A No, I don't have any. No, sir.

Q Were you also suffering from ulcers at that time?

A Yes, sir.

Q How long before 1967 did you have ulcers?

A I got ulcer for fifteen year.

Q And did you have any medication for your ulcers?

A Yes.

Q While you were in the grand jury?

A No, sir.

Q And how did you feel while you were there listening to these witnesses? Did you feel O.K. or did you feel bad?

A I feel bad. I feel terrible.

Q Did you ask anybody for a doctor or for medicine while you were in the grand jury? Did you talk to the interpreter about that?

A No, sir.

Q You didn't?

A No.

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* * *

BY THE COURT:

Q During the time you were in the grand jury did you have any kind of an epileptic fit or anything like that?

A No. When you got epilepsy you don't know when they come and you throw down on the floor. I got a pain in my stomach for the ulcer.

Q You had pains with the ulcer?

A Yeah. Also my -- the shot bother me.

Q The judges found in their findings -- well, let me go back. Your lawyer introduced certain findings in the record and one of the findings states: "Delgado had not taken dilantin for more than a year before August 25, 1967." Is that true?

A Yes, sir.

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* * *

A No, sir.

Q You didn't tell anybody about that?

A No, sir.

Q And you didn't complain about it in 1967?

A I complained, yeah.

Q When did you complain?

A In jail. When I be Simms Street.

Q In Simms Street?

A Yes.

Q But you didn't tell anybody when you were in the grand jury that you were sick and couldn't go on?

A I no say here, but I say before I go in there. When I been in my cell in Simms Street I tell the officer I sick.

Q Was that "sick" because you had been shot?

A My shot bother me, my stomach bother me and also I need medication for epilepsy.

Q But this is up at the jail, you say?

A Yes, sir.

Q On Simms Street?

A Yes, sir.

Q And they have a jail doctor there who took care of you?

A No doctor see me down there.

Q Did you have to go to the doctor?

A Yes. Yeah.

Q In the jail? Did you go to him?

A I no go to him.

Q You didn't go to him?

A No, sir.

Q Did you go to the jail hospital?

A No, sir. They put me up -- take me up immediately to the hospital. They put me in one cell. That's not no send me nowhere.

Q In other words, after you got out of the Hartford Hospital you were put in a cell?

A Right.

Q All right. Now, with respect to your medication you used to take when you had headaches, you remember that? Remember you used to take some medication for headaches?

A Where?

Q When you -- didn't you used to take some medication in 1964?

A Yeah. That for epilepsy.

Q Epilepsy, yes. You remember that?

A Yes.

Q You hadn't had any of that medication for some time, two or three years, wasn't it, before 1967?

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VI.

JUDGMENT

UNITED STATES DISTRICT COURT
District of Connecticut

(Caption Omitted)

This cause came on for consideration on an Application For A Writ Of Habeas Corpus and the Court having filed its Memorandum Of Decision under date of February 18, 1975, denying said Application,

It is accordingly ORDERED, ADJUDGED and DECREED that judgment be and is hereby entered in favor of the respondent and the Application For A Writ Of Habeas Corpus is denied.

Dated at Bridgeport, Connecticut, this 20th day of February, 1975.

SYLVESTER A. MARKOWSKI, Clerk

By /s/ Vincent R. DeRosa
Vincent R. DeRosa
Deputy in Charge

(Seal)

VII.

Constitutional and Statutory Citations

Connecticut Constitution, Article First, Sec. 8

In all criminal prosecutions, the accused shall have a right to be heard by himself and by counsel; to be informed of the nature and cause of the accusation; to be confronted by the witnesses against him; to have compulsory process to obtain witnesses in his behalf; to be released on bail upon sufficient security, except in capital offenses, where the proof is evident or the presumption great; and in all prosecutions by indictment or information, to a speedy, public trial by an impartial jury. No person shall be compelled to give evidence against himself, nor be deprived of life, liberty or property without due process of law, nor shall excessive bail be required nor excessive fines imposed. No person shall be held to answer for any crime, punishable by death or life imprisonment, unless on a presentment or an indictment of a grand jury, except in the armed forces, or in the militia when in actual service in time of war or public danger.

Connecticut General Statutes

Sec. 6-49. Sheriffs, deputy sheriffs, county detectives, constables, borough bailiffs, police officers, special protectors of fish and game and railroad and steamboat policemen, in their respective precincts, shall arrest, without previous complaint and warrant, any person for any offense in their jurisdiction, when such person is taken or apprehended in the act or on the speedy information of others, and members of the state police department or of any local police department or county detectives shall arrest, without previous complaint and warrant, any person who such officer has reasonable grounds to believe has committed or is committing a felony. Members of any local police department, when in immediate pursuit of one who may be arrested under the provisions of this section, are authorized to pursue such offender outside of their respective precincts into any part of the state in order to effect the arrest. Such person may then be returned in the custody of such officer to the precinct in which the offense was committed. Any person so arrested shall be presented with reasonable promptness before proper authority.

Sec. 51-70a. When any party in any proceeding in the circuit court, except a small claims session, requests that stenographic notes of the proceedings be made, the judge before whom the matter is pending shall call in an official court reporter or any competent stenographer, who shall be sworn to the faithful performance of his duties. The compensation of such court reporter or stenographer for attendance and his fees for making copies shall be fixed by the judge at a rate not greater than the rate established for the official court reporter of the superior court. The fee for a transcript of such notes, when made for the court or for the prosecuting attorney, shall, upon the certificate of the judge before whom the matter is pending, be paid by the state as other court expenses, and in all other cases by the party ordering the same, and such copies shall be furnished within a reasonable time.

Sec. 53-10. Any person who commits murder in the first degree, or who causes the death of another by wilfully placing any obstruction upon any railroad or by loosening, taking up or removing any part of the superstructure of such railroad or by wilfully burning any building or vessel, shall suffer death unless the jury recommends imprisonment in the State Prison for life. If the person accused elects to be tried by the court and is found guilty or if such person is convicted by confession, the court may, in its discretion, imprison such person in the State Prison for life. The guilt or innocence of the person charged with said crimes shall first be determined without a finding as to penalty. If such person has been found guilty of any of said crimes, there shall thereupon be further proceedings before the court or the jury on the issue of penalty. Evidence may be presented at the further proceedings on the issue of penalty, of the circumstances surrounding the crime, of the defendant's background and history, and of any facts in aggravation or mitigation of the penalty. The determination of the penalty of life imprisonment or death shall be in the discretion of the court or jury trying the issue of fact on the evidence presented, and the penalty fixed or recommended shall be expressly stated in the decision or verdict. In any case in which a defendant has been found guilty by a jury, and the same jury trying the issue of penalty is unable to reach a unanimous verdict on the issue of penalty, the court shall dismiss the jury and either impose the punishment of imprisonment for life in lieu of ordering a new trial on the issue of penalty, or order a new jury impaneled to try the issue of penalty, but the issue of guilt shall not be retried by such jury.

Sec. 53-174. Any person who disturbs or breaks the peace by tumultuous and offensive carriage, noise or behavior, or by threatening, traducing, quarreling with, challenging, assaulting or striking another, or disturbs or breaks the peace, or provokes contention, by following or mocking any person, with abusive or indecent language, gestures or noise, or with intent to frighten any person, threatens to commit any crime against him or his property or writes or prints and publicly exhibits or distributes, or publicly exhibits, posts up or advertises, any offensive, indecent or abusive matter concerning any person, shall be fined not more than five hundred dollars or imprisoned not more than one year or both.

CHAPTER 951

CONSTRUCTION OF STATUTES. PRINCIPLES OF CRIMINAL LIABILITY

Sec. 53a-4. Saving clause. The provisions of this chapter shall not be construed as precluding any court from recognizing other principles of criminal liability or other defenses not inconsistent with such provisions.

Sec. 53a-5. Criminal liability; mental state required. When the commission of an offense defined in this title, or some element of an offense, requires a particular mental state, such mental state is ordinarily designated in the statute defining the offense by use of the terms "intentionally," "knowingly," "recklessly" or "criminal negligence," or by use of terms, such as "with intent to defraud" and "knowing it to be false," describing a specific kind of intent or knowledge. When one and only one of such terms appears in a statute defining an offense, it is presumed to apply to every element of the offense unless an intent to limit its application clearly appears.

Sec. 53a-6. Effect of ignorance or mistake. (a) A person shall not be relieved of criminal liability for conduct because he engages in such conduct under a mistaken belief of fact, unless: (1) Such factual mistake negates the mental state required for the commission of an offense; or (2) the statute defining the offense or a statute related thereto expressly provides that such factual mistake constitutes a defense or exemption; or (3) such factual mistake is of a kind that supports a defense of justification.

(b) A person shall not be relieved of criminal liability for conduct because he engages in such conduct under a mistaken belief that it does not, as a matter of law, constitute an offense, unless (1) the law provides that the state of mind established by such mistaken belief constitutes a defense, or unless (2) such mistaken belief is founded upon an official statement of law contained in a statute or other enactment, an administrative order or grant of permission, a judicial decision of a state or federal court, or an interpretation of the statute or law relating to the offense, officially made or issued by a public servant, agency or body legally charged or empowered with the responsibility or privilege of administering, enforcing or interpreting such statute or law.

Sec. 53a-7. Effect of intoxication. Intoxication shall not be a defense to a criminal charge, but in any prosecution for an offense evidence of intoxication of the defendant may be offered by the defendant whenever it is

relevant to negate an element of the crime charged, provided when recklessness or criminal negligence is an element of the crime charged, if the actor, due to self-induced intoxication, is unaware of or disregards or fails to perceive a risk which he would have been aware of had he not been intoxicated, such unawareness, disregard or failure to perceive shall be immaterial. As used in this section, "intoxication" means a substantial disturbance of mental or physical capacities resulting from the introduction of substances into the body.

Sec. 53a-8. Criminal liability for acts of another. A peron, acting with the mental state required for commission of an offense, who solicits, requests, commands, importunes or intentionally aids another person to engage in conduct which constitutes an offense shall be criminally liable for such conduct and may be prosecuted and punished as if he were the principal offender.

Sec. 53a-9. Lack of criminal responsibility; absence of prosecution or conviction not a defense. In any prosecution for an offense in which the criminal liability of the defendant is based upon the conduct of another person under section 53a-8 it shall not be a defense that: (1) Such other person is not guilty of the offense in question because of lack of criminal responsibility or legal capacity or awareness of the criminal nature of the conduct in question or of the defendant's criminal purpose or because of other factors precluding the mental state required for the commission of the offense in question; or (2) such other person has not been prosecuted for or convicted of any offense based upon the conduct in question, or has been acquitted thereof, or has legal immunity from prosecution therefor; or (3) the offense in question, as defined, can be committed only by a particular class or classes of persons, and the defendant, not belonging to such class or classes, is for that reason legally incapable of committing the offense in an individual capacity.

Sec. 53a-10. Defense. (a) In any prosecution in which the criminal liability of the defendant is based upon the conduct of another person under section 53a-8, it shall be a defense that the defendant terminated his complicity prior to the commission of the offense under circumstances: (1) Wholly depriving it of effectiveness in the commission of the offense, and (2) manifesting a complete and voluntary renunciation of his criminal purpose.

(b) For purposes of this section, renunciation of criminal purpose is not voluntary if it is motivated, in whole or in part, by circumstances, not present or apparent at the inception of the actor's course of conduct, which increase the probability of detection or apprehension or which make more difficult the accomplishment of the criminal purpose. Renunciation is not complete if it is motivated by a decision to postpone the criminal conduct until a more advantageous time or to transfer the criminal effort to another but similar objective or victim.

Sec. 53a-11. Criminal liability of an individual for conduct in name or behalf of corporation. A person shall be criminally liable for conduct constituting an offense which he performs or causes to be performed in the name of or in behalf of a corporation to the same extent as if such conduct were performed in his own name or behalf.

Sec. 53a-12. Defenses; burden of proof. (a) When a defense other than an affirmative defense, is raised at a trial, the state shall have the burden of disproving such defense beyond a reasonable doubt.

(b) When a defense declared to be an affirmative defense is raised at a trial, the defendant shall have the burden of establishing such defense by a preponderance of the evidence.

Sec. 53a-13. Insanity as defense. In any prosecution for an offense, it shall be a defense that the defendant, at the time of the proscribed conduct, as a result of mental disease or defect lacked substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law. As used in this section, the terms mental disease or defect do not include an abnormality manifested only by repeated criminal or otherwise anti-social conduct.

Sec. 53a-14. Duress as defense. In any prosecution for an offense, it shall be a defense that the defendant engaged in the proscribed conduct because he was coerced by the use or threatened imminent use of physical force upon him or a third person, which force or threatened force a person of reasonable firmness in his situation would have been unable to resist. The defense of duress as defined in this section shall not be available to a person who intentionally or recklessly places himself in a situation in which it is probable that he will be subjected to duress.

Sec. 53a-15. Entrapment as defense. In any prosecution for an offense, it shall be a defense that the defendant engaged in the proscribed conduct because he was induced to do so by a public servant, or by a person acting in cooperation with a public servant, for the purpose of institution of criminal prosecution against the defendant, and that the defendant did not contemplate and would not otherwise have engaged in such conduct.

Sec. 53a-16. Justification as defense. In any prosecution for an offense, justification, as defined in sections 53a-17 to 53a-23, inclusive, shall be a defense.

Sec. 53a-17. Conduct required or authorized by law or judicial decree. Unless inconsistent with any provision of this chapter defining justifiable use of physical force, or with any other provision of law, conduct which would otherwise constitute an offense is justifiable when such conduct is required or authorized by a provision of law or by a judicial decree, including but not limited to (1) laws defining duties and functions of public servants, (2) laws defining duties of private citizens to assist public servants in the performance of certain of their functions, (3) laws governing the execution of legal process, (4) laws governing the military services and the conduct of war, and (5) judgments and orders of courts.

Sec. 53a-18. Use of physical force or deadly physical force generally. The use of physical force upon another person which would otherwise constitute an offense is justifiable and not criminal under any of the following circumstances:

(1) A parent, guardian, teacher or other person entrusted with the care and supervision of a minor or an incompetent person may use reasonable physical force upon such minor or incompetent person when and to the extent

that he reasonably believes it is necessary to maintain discipline or to promote the welfare of such minor or incompetent person.

(2) An authorized official of a correctional institution or facility may, in order to maintain order and discipline, use such physical force as is reasonable and authorized by the rules and regulations of the department of correction.

(3) A person responsible for the maintenance of order in a common carrier of passengers, or a person acting under his direction, may use reasonable physical force when and to the extent that he reasonably believes it is necessary to maintain order, but he may use deadly physical force only when he reasonably believes it is necessary to prevent death or serious physical injury.

(4) A person acting under a reasonable belief that another person is about to commit suicide or to inflict serious physical injury upon himself may use reasonable physical force upon such person to the extent that he reasonably believes it is necessary to thwart such result.

(5) A duly licensed physician, or a person acting under his direction, may use reasonable physical force for the purpose of administering a recognized form of treatment which he reasonably believes to be adapted to promoting the physical or mental health of the patient, provided the treatment (A) is administered with the consent of the patient or, if the patient is a minor or an incompetent person, with the consent of his parent, guardian or other person entrusted with his care and supervision, or (B) is administered in an emergency when the physician reasonably believes that no one competent to consent can be consulted and that a reasonable person, wishing to safeguard the welfare of the patient, would consent.

Sec. 53a-19. Use of physical force in defense of person. Except as provided in subsections (b) and (c) a person is justified in using reasonable physical force upon another person to defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force, and he may use such degree of force which he reasonably believes to be necessary for such purpose; except that deadly physical force may not be used unless the actor reasonably believes that such other person is (1) using or about to use deadly physical force, or (2) inflicting or about to inflict great bodily harm.

(b) Notwithstanding the provisions of subsection (a), a person is not justified in using deadly physical force upon another person if he knows that he can avoid the necessity of using such force with complete safety (1) by retreating, except that the actor shall not be required to retreat if he is in his dwelling, as defined in section 53a-100, or place of work and was not the initial aggressor, or if he is a peace officer or a private person assisting such peace officer at his direction, and acting pursuant to section 53a-22, or (2) by surrendering possession of property to a person asserting a claim of right thereto, or (3) by complying with a demand that he abstain from performing an act which he is not obliged to perform.

(c) Notwithstanding the provisions of subsection (a), a person is not justified in using physical force when (1) with intent to cause physical injury or death to another person, he provokes the use of physical force by such other person, or (2) he is the initial aggressor, except that his use of physical force upon another person under such circumstances is justifiable if he withdraws from the encounter and effectively communicates to such other person his intent to do so, but such other person notwithstanding continues or threatens

the use of physical force, or (3) the physical force involved was the product of a combat by agreement not specifically authorized by law.

Sec. 53a-20. Use of physical force in defense of premises; criminal trespass; arson. A person in possession or control of premises, or a person who is licensed or privileged to be in or upon such premises, is justified in using reasonable physical force upon another person when and to the extent that he reasonably believes it is necessary to prevent or terminate the commission or attempted commission of a criminal trespass by such other person in or upon such premises; but he may use deadly physical force under such circumstances only (1) in defense of a person as prescribed in section 53a-19, or (2) when he reasonably believes it is necessary to prevent an attempt by the trespasser to commit arson or any crime of violence, or (3) to the extent that he reasonably believes it necessary to prevent or terminate an unlawful entry by force into his dwelling as defined in section 53a-100, or place of work, and for the sole purpose of such prevention or termination.

Sec. 53a-21. Use of physical force in defense of property; larceny; criminal mischief. A person is justified in using reasonable physical force upon another person when and to the extent that he reasonably believes it necessary to prevent an attempt by such other person to commit larceny or criminal mischief involving property, or when and to the extent he reasonably believes it necessary to regain property which he reasonably believes to have been acquired by larceny within a reasonable time prior to the use of such force; but he may use deadly physical force under such circumstances only in defense of person as prescribed in section 53a-19.

Sec. 53a-22. Use of physical force in making arrest or preventing escape. (a) For purposes of this section, a reasonable belief that a person has committed an offense means a reasonable belief in facts or circumstances which if true would in law constitute an offense. If the believed facts of circumstances would not in law constitute an offense, an erroneous though not unreasonable belief that the law is otherwise does not render justifiable the use of physical force to make an arrest or to prevent an escape from custody. A peace officer or an authorized official of the department of correction who is effecting an arrest pursuant to a warrant or preventing an escape from custody is justified in using the physical force prescribed in subsections (b) and (c) unless such warrant is invalid and is known by such officer to be invalid.

(b) Except as provided in subsection (a), a peace officer or an authorized official of the department of correction is justified in using reasonable physical force upon another person when and to the extent that he reasonably believes it necessary to: (1) Effect an arrest or to prevent the escape from custody of a person whom he reasonably believes to have committed an offense, unless he knows that the arrest or custody is unauthorized; or (2) defend himself or a third person from the use or imminent use of physical force while effecting or attempting to effect an arrest or while preventing or attempting to prevent an escape.

(c) A peace officer or an authorized official of the department of correction is justified in using deadly physical force upon another person for the purposes specified in subsection (b) only when he reasonably believes that such is necessary to: (1) Defend himself or a third person from the use or imminent use of deadly physical force; or (2) effect an arrest or to prevent the es-

cape from custody of a person whom he reasonably believes has committed or attempted to commit a felony.

(d) Except as provided in subsection (e), a person who has been directed by a peace officer or an authorized official of the department of correction to assist such peace officer or official to effect an arrest or to prevent an escape from custody is justified in using reasonable physical force when and to the extent that he reasonably believes it is necessary to carry out such peace officer's or official's direction.

(e) A person who has been directed to assist a peace officer or an authorized official of the department of correction under circumstances specified in subsection (d) may use deadly physical force to effect an arrest or to prevent an escape from custody only when: (1) He reasonably believes such to be necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force; or (2) he is directed or authorized by such peace officer or official to use deadly physical force, unless he knows that the peace officer or official himself is not authorized to use deadly physical force under the circumstances.

(f) A private person acting on his own account is justified in using reasonable physical force upon another person when and to the extent that he reasonably believes it is necessary to effect an arrest or to prevent the escape from custody of an arrested person whom he reasonably believes to have committed an offense and who in fact has committed such offense; but he is not justified in using deadly physical force in such circumstances, except in defense of person as prescribed in section 53a-19.

Sec. 53a-23. Use of physical force to resist arrest not justified. A person is not justified in using physical force to resist an arrest by a reasonably identifiable peace officer, whether such arrest is legal or illegal.

Sec. 53a-35(b)(1). For a class A felony, life imprisonment.

Sec. 53a-35(b)(1). For a class A felony, the minimum term shall not be less than ten nor more than twenty-five years.

Sec. 53a-45. Murder punishable by death or life imprisonment. Guilty plea. Waiver of jury trial. Finding of lesser degree. (a) Murder is punishable as a class A felony unless it is a capital felony and the death sentence is imposed as provided by section 4 of Public Act 73-137.

(b) If a person indicted for murder waives his right to a jury trial and elects to be tried by a court, the court shall be composed of the judge presiding at the session and two other judges to be designated by the chief justice of the supreme court, and such judges, or a majority of them, shall determine the question of guilt or innocence and shall, as provided in said section 4 of Public Act 73-137, render judgment and impose sentence.

(c) The court or jury before which any person indicted for murder is tried may find him guilty of homicide in a lesser degree than that charged.

Sec. 53a-47. Acquittal on grounds of mental disease or defect. Confinement and examination. Release. (a) (1) When any person charged with an offense is acquitted on the grounds of mental disease or defect, the court shall order such person to be temporarily confined in any of the state hospitals for mental illness for a reasonable time, not to exceed ninety days, for an examination to determine his mental condition, except that, if the court can determine, on the basis of the evidence already before it, that such person is not mentally ill to the extent that his release would constitute a danger to himself or others, the court may order his immediate release, either unconditionally or conditionally pursuant to subdivision (2) of subsection (e). (2) The person to be examined shall be informed that, in addition to the examination provided for in subdivision (1), he has a right to be examined during such confinement by a psychiatrist of his own choice. (3) Within sixty days of the confinement pursuant to subdivision (1), the superintendent of such hospital and the retained psychiatrist, if any, shall file reports with the court setting forth their findings and conclusions as to whether such person is mentally ill to the extent that his release would constitute a danger to himself or others. Copies of such reports shall be delivered to the state's attorney or prosecutor and to counsel for such person. (4) Upon receipt of such reports, the court shall promptly schedule a hearing. If the court determines that the preponderance of the evidence at the hearing establishes that such person is mentally ill to the extent that his release would constitute a danger to himself or others, the court shall confine such person in a suitable hospital or other treatment facility.

(b) Whenever a person is committed for confinement pursuant to subdivision (4) of subsection (a), his confinement shall continue until he is no longer mentally ill to the extent that his release would constitute a danger to himself or others, provided the total period of confinement, except as provided in subsection (d), shall not exceed a maximum term fixed by the court at the time of confinement, which maximum term shall not exceed the maximum sentence which could have been imposed if the person had been convicted of the offense. Where the offense is a class A felony, such maximum term shall be twenty-five years.

(c) (1) Upon certification by the superintendent of the hospital or institution that, in his opinion, such person is no longer mentally ill to the extent that his release would constitute a danger to himself or others, the court may order the release of the person confined at the expiration of thirty days from the time such certificate is filed. (2) At the time such certificate is filed with the court, a copy shall be furnished to the state's attorney or prosecutor who

may request a hearing as to whether such person should be released. At such hearing, evidence of mental condition may be submitted. The confined person shall be released unless the state establishes by a preponderance of the evidence that such person is, at the time of hearing, mentally ill to the extent that his release would constitute a danger to himself or others. (3) The superintendent shall, during such confinement, submit to the court at least every six months a written report with respect to the mental condition of such person. Copies of such report shall be furnished to the state's attorney or prosecutor and counsel for the confined person. The court, upon its own motion or at the request of the parties, may at any time hold a hearing to determine whether such person should be released prior to the expiration of the maximum period, in accordance with the standards set forth in subdivision (1), provided such a hearing shall be held at least every five years.

(d) At the expiration of such maximum period the superintendent of such hospital or institution shall, if the person is still confined there, release him, unless the following procedure for an order of continued confinement has been instituted. At any time within ninety days prior to such expiration, the state's attorney for the county or the chief prosecutor for the circuit in which the person was tried may petition the court for an order of further confinement on the grounds that release of the person would constitute a danger to life or person. The court shall thereupon hold a prompt hearing, after due notice to the person confined. At such hearing the state shall have the burden of proving by a preponderance of the evidence that such person's continued confinement is warranted because he is mentally ill to the extent that his release would constitute a danger to life or person. If the court so finds, the court shall order the continued confinement of the person until such time as it is determined that his release would not constitute a danger to life or person; provided the provisions of subsections (c) and (e) shall be applicable to persons so confined.

(e) (1) In each of the hearings provided for in this section the mentally ill person shall have a right to be present, to be represented by counsel and to present evidence. If he fails or refuses to obtain counsel, the court shall appoint counsel to represent him. Such person may call a psychiatrist to examine him and testify at any such hearing. The participation of such psychiatrist shall be at the confined person's expense unless he is financially unable to retain one, in which case the court shall assist him in obtaining a psychiatrist's services at the expense of the state. (2) The court may order that such person be released under such conditions and supervision as the court deems appropriate to his situation.

(f) If any person is confined hereunder, other than for temporary confinement authorized by subsection (a), and such person has estate, the court may appoint an overseer for such person, who shall forthwith make an application to the probate court of competent jurisdiction for the appointment of a conservator of the estate of such person.

(g) The expense of confinement, support and treatment of any person confined hereunder shall be computed and paid for in accordance with the provisions of section 17-205a and chapter 308.

(h) In lieu of confinement in any state hospital or treatment facility hereunder, the court may allow some responsible person, who posts sufficient bond to the state, to confine such person in such manner as the court orders.